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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,908	02/25/2004	Christopher Hallam	148/359	4399
23638	7590	06/06/2006	EXAMINER	
ADAMS EVANS P.A. 2180 TWO WACHOVIA CENTER CHARLOTTE, NC 28282			ELKINS, GARY E	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 06/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/786,908

Applicant(s)

HALLAM, CHRISTOPHER

Examiner

Gary E. Elkins

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☒ Claim(s) 21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>20040802</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group I, claims 1-21 in the reply filed on 03 March 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claim 22 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Claim Objections

3. Claim 21 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim may only refer back to the parent claims in the alternative. See MPEP § 608.01(n). Accordingly, the claim 21 has not been further treated on the merits.

Claim Rejections - 35 USC § 112

4. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is unclear with respect to whether a folded blank or an unfolded blank is being claimed, i.e. whether the whereby clause is defining structure of the claimed blank or merely intended use of an unfolded blank.

The last 4 lines of claim 1 are unclear with respect to whether the limitations are being defined as part of the "whereby" clause or as part of the blank set forth in line 1.

In claim 1, line 5, “which connecting part” is unclear with respect to whether the previously defined connecting part or another connecting part is being referred to.

The following are each a double inclusion of an element, i.e. the element is being reintroduced into the claims: claim 10, “a plurality of frangible tabs” (one previously defined in claim 9), claim 11, “a first frangible tab” and “another frangible tab” and claim 12, “a frangible tab”, “an end” (first end or second end?) and “a panel”.

In claim 12, “the region” lacks antecedent basis in the claims.

In claim 13, “A tubular carton wall comprising a blank” is unclear with respect to how a carton wall is “comprising” a blank. A blank, by definition, is an intermediate product prior to final formation of the final product, i.e. the carton wall. It is therefore unclear how the final product can comprise the intermediate product. As a result, the claim is unclear with respect to what is being claimed. Note is made of claim 21 which appears to recognize that the carton wall is formed from the blank rather than comprising the blank.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, 6-14 and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Wasyluka. Wasyluka discloses a blank (fig. 1) formed by two panels (12, 13) connected by connecting parts 24. The blank is capable of being folded along the connecting parts 24 into face to face relationship and is capable of forming engaging means as claimed. Each connecting part

24 (e.g. formed between 21, 21'; two connecting parts formed between 20, 20', etc.) extends along a part only of a mutual edge (A-A where the panels abut) of the first and second panels adjacent the engaging means as claimed. With respect to claims 6 and 17, note is made of the central connecting part 24 which is about 1/5 of the circumference of the carton which the blank is capable of forming. Also, with respect to claims 9-12, note is made that each of the connecting parts is also considered to be a frangible tab insofar as claimed.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4, 5, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wasyluka. Wasyluka discloses all structure of the claimed blank except formation of the connecting part from about 3 cm to about 5 cm (cls. 4 and 15) or about 4 cm (cls. 5 and 16). It would have been obvious to make one of the connecting parts in Wasyluka with a length of about 3 to about 5 cm or about 4 cm as a mere selection of the size of the container. The ability to size a container to hold any reasonable size of content is within the level of skill in this art. See In re Rose, 105 USPQ 237 (CCPA 1955) and Gardiner v. TEC Systems, Inc., 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 225 USPQ 232 (1984).

Conclusion

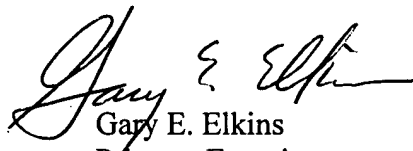
The remaining cited prior art is illustrative of the general state of the art.

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday, Tuesday and Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.


Gary E. Elkins
Primary Examiner
Art Unit 3727